

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 69.2(m))
and (ee) Of The Commission's)
Rules To Include Independent)
Public Payphones Within The)
"Public Telephone" Exemption)
From End User Common Line)
Access Charges)

RM No. 8723

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OPPOSITION OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to Section 1.405(a) of the Federal Communications Commission's ("Commission") Rules,¹ hereby files its opposition to the Petition for Rulemaking ("Petition") filed by the American Public Communications Council ("APCC").²

I. INTRODUCTION

In its Petition, APCC proposes to eliminate the requirement that End User Common Line ("EUCL") charges be assessed to Independent Payphone Providers ("IPP") who provide payphone equipment and services at various locations. It alleges that such EUCL charges are discriminatory by asserting that local exchange carriers ("LEC") who provision public telephones are not required to pay similar

¹ 47 CFR § 1.405(a).

² Petition for Rulemaking of the American Public Communications Council, Inc., filed herein Oct. 23, 1995.

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charges.³ It instead proposes that loop costs for IPP-provisioned payphones be recovered the same as public telephones provisioned by the LECs through the Carrier Common Line (“CCL”) charge assessed to interexchange carriers (“IXC”). Specifically, APCC requests that: 1) IPPs be included in the definition of “public telephone” under Section 69.2(ee) of the Commission’s Rules, and 2) the Commission clarify that the operators of such phones will not be deemed to be “end users” as that term is defined by Section 69.2(m) of the Commission’s Rules.⁴ As the Commission has concluded previously, APCC’s proposals are flawed and would not represent a viable solution to independently provided payphone access charge issues.

II. PAYPHONE LOOP COSTS SHOULD BE PAID BY THE COST-CAUSER WHERE FEASIBLE

The Commission addressed this issue in its initial access charge proceedings which established how the access charge system would function.⁵ In the Access Charge Order, the Commission initially established a separate payphone element for the recovery of LEC investment in payphones, payphone lines, and associated appurtenances.⁶ In the First Reconsideration Order, the Commission determined

³ Id. at 7-9.

⁴ Id. at 1-2.

⁵ In the Matter of MTS and WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (“Access Charge Order”), modified on recon., 97 FCC 2d 682 (1983) (“First Reconsideration Order”), modified on further recon., 97 FCC 2d 834 (1984), aff’d and remanded in part sub nom. National Ass’n of Regulatory Utility Comm’rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), modified on further recon., 99 FCC 2d 708 (1984) and 101 FCC 2d 1222 (1985), further recon., 102 FCC 2d 849 (1985).

⁶ Access Charge Order, 93 FCC 2d at 280 ¶ 128.

that such a rate element would not recover costs from the majority of payphone calls which were “sent paid.”⁷ Because this violated the Commission’s long-standing “cost-causation” principle, the Commission eliminated the separate payphone element and instead allocated the “public” telephone revenue requirement to the CCL element.⁸ The Commission, however, treated independently provided and semi-public payphones differently. Stating that it was consistent with the cost-causation principle, the Commission required that independently provided payphone loop costs be recovered in the same manner as ordinary business subscriber lines.⁹ It reasoned that “[t]hose fixed costs can be recovered from an identifiable business end user through flat charges.”¹⁰ U S WEST believes that this is the correct approach and is consistent with the Commission’s long-standing cost-causation principles. Additional cost recovery for payphones through the CCL charge is inappropriate.

Payphone services provided by IPPs are not regulated “public telephone” services and traditionally have been treated in a manner significantly different than public payphone services provided by LECs. IPPs are not restricted from providing interLATA service, IPPs receive commissions from interLATA providers, IPPs receive dial-around compensation for interstate calls, and IPPs are

⁷ “Sent paid” calls include collect calls, calls billed to a credit card, or calls billed to a third party.

⁸ First Reconsideration Order, 97 FCC 2d at 705 ¶ 58.

⁹ Id. at 706 ¶ 60.

¹⁰ Id.

appropriately required to pay EUCL charges. At the same time, LECs are prohibited from participating in interLATA toll and they receive CCL charges for the interstate traffic generated from their payphones to recover associated non-traffic sensitive loop costs. Only a portion of the CCL charges received from payphone service is actually attributable to payphone costs. Part of the CCL charge is attributed to the network access line service in the same manner as it is to Public Access Line ("PAL").

The Commission has consistently held that the most appropriate regulatory policy is to assess the costs of service on the cost-causer. In this case, the cost-causer for PAL service is the IPP who subscribes to the service and resells the service to end users for a profit. Aggregators such as IPPs have the ability to recover their costs through the resale of the service to end users, IXC commissions and other revenues they receive from the toll calls placed on their payphones. Aggregators secure commissions from IXCs for the interstate traffic they route to the IXCs' toll networks, usually as a percent of the revenues. Additionally, IPPs have the option to charge location specific set-use fees and receive direct compensation from IXCs for dial-around traffic as approved by the Commission in CC Docket No. 91-35.¹¹

U S WEST believes that the revenues available to IPPs, but not available to LECs, provide a sufficient method of cost recovery for unregulated IPPs and offsets

¹¹ See In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Memorandum Opinion and Order on Reconsideration, FCC 93-404, rel. Sep. 16, 1993.

the required EUCL charges. U S WEST also believes it is contrary to the cost-causation principle and the Commission's overall goals in the access charge proceeding to shift cost recovery from the cost-causer, the subscribers of the PAL, to the IXC through CCL charges. Elimination of the EUCL charge from aggregators results in shifting of cost recovery which could result in higher interstate toll rates for end users while allowing IPP to receive higher commissions and reduce their PAL costs by shifting the cost to the carrier.

III. U S WEST IMPUTES EUCL CHARGES ON ITS OWN PUBLIC TELEPHONES

Additionally, APCC claims that Commission action is necessary to avoid discriminatory application of access charges to IPP-provisioned payphones. As specifically applied to U S WEST, this claim is inaccurate and somewhat disingenuous. Although not required by the Commission's Rules, since 1988 U S WEST has imputed the EUCL rate along with PAL rates in establishing its public payphone price floor.¹² U S WEST additionally imputes EUCL charges in its evaluation methodology for locations or accounts for public telephone placement. Imputation of these charges is a direct action taken by U S WEST to ensure that payphone prices and placements are in fact non-discriminatory.

As many of the same IPPs participate in similar state payphone dockets, they are certainly aware of this self-imposed imputation of EUCL costs by U S WEST. U S WEST's imputation of these costs on its own public payphones has been raised

¹² In U S WEST's service territory, imputation is only specifically required in Washington State by the Washington Utilities and Transportation Commission.

and noted in the record of multiple state proceedings. APCC's claim of discrimination in the public payphone marketplace is therefore inaccurate as it applies to U S WEST and other LECs who perform similar imputation. It is also somewhat transparent. What the APCC and represented IPPs would like to actually avoid is the payment of legitimate EUCL charges. This shift in costs to CCL is inappropriate for many of the cost-causation reasons noted previously. The Commission should avoid this potentially inequitable result by also rejecting the APCC's claims of discrimination.

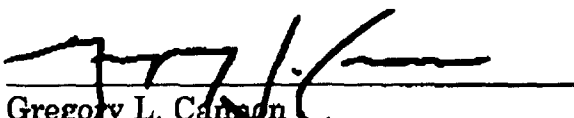
IV. CONCLUSION

The issues specified in APCC's Petition do not merit a rulemaking proceeding by the Commission. As demonstrated above by its imputation of EUCL charges, none of the allegations of discrimination contained therein are applicable to U S WEST and other similarly situated LECs. The Commission should therefore reject APCC's Petition in this matter.

Respectfully submitted,

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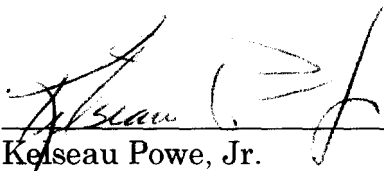
Of Counsel,
Dan L. Poole

Its Attorney

December 4, 1995

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 4th day of December, 1995, I have caused a copy of the foregoing **OPPOSITION OF U S WEST COMMUNICATIONS, INC.,** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



Kelseau Powe, Jr.

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